IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

LETTERS PATENT APPEAL NO. 267 OF 2000
IN
WRIT PETITION NO.2262 OF 1991

1. Janata Sahakari Bank Limited,
   144A, Shukrawar Peth,
   Thorale Bhajirao Road,
   Pune-411 002.

2. Vinayak Narhar Sathe,
   Chairman of the Bank,
   residing at 18,
   Pathik Vrindavan Society,
   Near Dattawadi Bridge, Pune.

3. Hanumant Narayan Kundal,
   Managing Director of the Bank,
   residing at Geet Govind Apartment,
   Sahakar Nagar No.11,
   Near Dash Pooja Ganpati,
   Pune-411 009.

4. Vijay Keshav Karkakar,
   Chief Officer of the Bank,
   residing at Samadhan Apartments,
   Sahakar Nagar No.11, Near Dash
   Pooja Ganpati, Pune-411 009.

.....Appellants.

Vs.

Prabhakar Rajaram Gangan,
residing at 1317 Mayuresh Kakasaheb
Surve Path,
Ratnagiri.

.....Respondent.

Mrs. Meena H. Doshi for the Appellants.

Ms. M.D. Buch with Ms. B.B. Dholakia for the Respondent.

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CORAM: S.B. MHASE &
R.S.MOHITE, JJ.
DATED: 29/10/2004.

ORAL JUDGMENT : (Per R.S. MOHITE, J.)

1. This Letters Patent Appeal seeks to quash and set aside a Judgment and order passed by the Single Judge of this court on 20.10.1999 in Writ Petition No.2262 of 1991. By the impugned Judgment and order, the learned Single Judge allowed the said writ petition and quashed and set aside the Judgment and order passed by the Member, Industrial Court, Pune in (ULP) No.87 of 1999 by which the Industrial Court, Pune had dismissed the complaint filed by the employee. By the impugned Judgment, the Single Judge directed that the employee shall be deemed to have continued in service for a period of three years from the date of superannuation and that he shall be entitled to wages for that period as he would have earned the same had he been continued in service. The learned Single Judge observed that the employee was in service till 30.4.1991 due to protection granted by the Industrial Court and therefore, it was further directed that this period could be deducted while computing the wages for the period of three years.

2. The brief facts of the case are as under:

a) That, the respondent No.1 (hereinafter

referred to as an "employee") had been working with the appellant (hereinafter referred to as the "bank") for a total period of 34 years. He was to reach the age of superannuation of 55 years on 27.4.1990. The employee was governed by Standing Order No.22(7) which permitted extension of service and was in the following terms.

> "22(7) Every employee shall retire from the service on attaining the age of 55 years. Extension not exceeding one year at a time of 3 years in all may be given at the discretion of the Manager".

b) Before the employee reached his age of superannuation, on 13.1.1990, the appellant-bank addressed a letter to him informing him that he was scheduled to reach his age of superannuation on 27.4.1990 and further informed him that he was due for retirement on 30.4.1990. By the said letter the employee was further informed about details pertaining to the Earned and Medical leave standing at his credit.

c) On 17.1.1990 the employee wrote to the bank for extension of service. He acknowledged that he had received the letter dated 13.1.1990. He stated that there was no earning member in his family. His elder

son was searching for a job and his second son was taking college education. He claimed that he required his bank job. That, he had a healthy body and was willing to work. He therefore, prayed that his tenure should be extended.

d) It appears from the record that this application/representation was considered by the Manager of the Ratnagiri Branch and the said Manager prepared and circulated his report dated 29.1.1990 to the Chief Officer of the bank. In his report, he dealt with the representation made by the employee. He stated that the employee had earlier been working in Ratnagiri Urban Co.op. Bank and while he was so serving in that bank, there were some allegations about misconduct against him but the same had not been proved. He further mentioned that there was no special benefit to the bank by continuing the employee. That his day to day work was not found to be very satisfactory and that some errors were found in his day to day working which in the future could become serious. The report recommended that no extension should be given to the employee.

e) At the Head office, a noting was prepared on the basis of this report incorporating the substance of

the report and accordingly, on 22.2.1990 the noting was approved and a decision was thus taken not to grant extension to the employee after the age of superannuation.

f) This decision was conveyed to the employee by the bank vide its letter dated 26.2.1990.

g) On 21.4.1990, the employee filed a complaint bearing (ULP) No.87/1990 under Section-28 alleging an unfair labour practice covered under items 5 and 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act,1971. In this complaint, the Industrial Court granted an ad-interim injunction on 11.6.1990 directing the bank to continue the employee for a period of six months from the date of the order or till the final disposal of the complaint whichever was earlier. The bank had challenged this grant of interim relief by filing Writ Petition No.4007 of 1990 and by an order dated 11.9.1990 this court directed the Industrial Court to decide the matter expeditiously and at any rate to dispose of the complaint by November,1990 and continued the ad interim injunction pending disposal of the complaint.

h) On 30.4.1991, the Industrial Court passed a

Judgment and order dismissing the complaint filed by the employee and on the same day the bank issued a relieving letter to the employee. It is an admitted position that after 30.4.1991 the employee has not worked with the bank.

i) On 6.5.1991, the employee filed Writ Petition No. 2262 of 1991 challenging the order of the Industrial Court dated 30.4.1991 dismissing his complaint. In spite of two attempts made by the employee to secure interim relief pending the petition, no interim relief was granted to the employee save and except by way of directions to the bank to compute the terminal benefits and make the computed payment to the employee on or before 15.1.1992.

j) On 28.10.1999, the Single Judge of this court allowed Writ Petition No.2262 of 1991 and directed that the employee should be deemed to have been continued in service for a period of three years from the date of superannuation and also directed that he will be eligible for wages for the said period. Since the employee had already worked for a period of one year, under an interim protection granted by this court and had been paid wages for that period, adjustment was made for the wages actually paid.

k) The bank then filed the present Letters Patent Appeal on 4.12.1999 before the Division Bench and the same is being disposed of by this Judgment.

3) We have heard both the parties and perused the record. The Standing order No.22(7) provided that every employee shall retire from the service on attaining the age of 55 years but provided that extension not exceeding one year at a time of three years in all may be given at the discretion of the Manager. In the present case, the employee did seek an extension on personal grounds. The record indicates that this representation was in fact considered and a report was forwarded by the Branch Manager to the Head Office giving reasons as to why the extension ought not to granted. This report dated 29.1.1990 was then considered by the Head office and accepted on 5.2.1990. It is true that, in this report there is no detailed reasoning given as to the nature of the day to day errors said to have been committed by the employee. However, we cannot lose sight of the fact that it was merely an internal administrative report and it could not be expected that the same should contain all possible details or should be analysed as if it where a Judgment of a judicial or quasi judicial body. We find

that the bank had applied its mind by giving reasons and after considering the report the Manager exercised his discretion under Standing Order No.22(7) and rejected the application for extension.

4. The learned Single Judge has allowed the writ petition on the ground that the report submitted was vague in the sense that there were no details of the day to day errors said to have been committed by the employee. In our view, the said report was merely an internal administrative report forwarded to the Head office for the purpose of aiding the Manager in exercising his administrative discretion and could not be faulted merely it does not contain details. The report also does state that there was no benefit to the bank by extending the service of the employee.

5. In this view of the matter, we find that it was not proper to hold that the Manager of the bank had arbitrarily exercised his discretion vested under Standing Order No.22(7) as he had to relied upon a report of the employees superior i.e. Branch Manager Shri. Deshpande.

6. The employee entered into the witness box and in his evidence he admitted that the Branch Manager

Shri. Deshpande who had given the adverse report had no enmity with him. He further admitted that in the case of grant of extension to the post of clerk, the medical certificate as well as the report of the work is taken into consideration. In this regard, he was shown zerox copy of the letter dated 21.1.1990 which forwarded the report sent by the Branch Manager to the Head Office. He identified the signature on that letter to be that of the Branch Manager Mr. Deshpande. In this regard, we have also been shown the norms required to be followed by the bank and the said norms are contained in letter dated 10.6.1988 addressed by the bank to the Chairman, Janata Bank Pune Staff Welfare Association which indicates that in the cases other than those of Peons, extension of one year at a time subject to maximum extension of three years would be given to the staff after examining the medical report and a report regarding the work. In the present case, we find that the report regarding the work was in fact taken into consideration by the Chief Manager and relied upon and only thereafter extension was refused by the Management.

7. The learned Advocate appearing for the employee relied upon a Division Bench Judgment of this court in the case of **Tata Textile Mills (U.C.) & ors.**

Vs. Munnilal N. Yadav and ors. In the said case, the Division Bench was concerned with interpreting Standing Order No.20-A which was in the following terms:

> "20-A. An operative shall retire from service on attaining the age of 60 years, but a male operative shall be retained in service, if he continues to be efficient, upto the age of 63 years, provided that when retrenchment becomes necessary a person who has completed the age of 60 may be retired in preference to younger men".

After referring to various case law, the Division Bench concluded that the phraseology of the Standing Order suggested that grant of extension was obligatory if two conditions were satisfied i.e. the person was a male operative and that he continued to be efficient. The learned counsel for the employee further emphasised the finding of the Division Bench that what the employer was required to perform was only periodical evaluation and not a continued monitoring. On the basis of this, it was argued that no periodical evaluation was done in order to find out if the employee was efficient or not. We find that the Standing Order which was interpreted by the Division Bench in that case was on completely

different footing. There was no element of discretion in that Standing Order. In the present Standing Order which falls before us for interpretation, there is a clear discretion conferred upon the Manager and there was no material to show that as to how the said discretion was exercised wrongly or improperly.

8. In any case, we find from the Standing Order that the extension could have been granted only for one year at a time subject to maximum period of three years. From this, it follows that when the employee had sought an extension of service vide his letter dated 17.1.1990, he could only have sought extension for a period of one year only. His case would have to be further evaluated in the two succeeding years. The learned Single Judge has completely missed this aspect of the matter while directing the employer that the employee shall be deemed to have continued in service for a period of three years and granting back wages for this period, even though the employee had not worked for two years after his termination on 30.4.1991, when the protection granted by way of ad interim relief had been lifted.

9. In the circumstances, we find that this is a fit case where the appeal is required to be allowed.

Hence, this Letters Patent Appeal is allowed and the Judgment and order passed by the Single Judge of this court on 28.10.1999 in Writ Petition No.2262 of 1991 is quashed and set aside.

10. It is apparent from the record that the employee was in service till 30.4.1991 because of the interim protection granted by the court. Mrs. M.H. Doshi appearing for the bank agrees and undertakes that the amount which had already been paid to the employee till date will not be recovered by the bank. This statement and undertaking is accepted. In the circumstances, there shall be no order as to costs.

(R.S. MOHITE, J.) **(S.B. MHASE, J.)**